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Sent via email to CLEA@fec.gov
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July 23, 2018

Federal Election Commission
Office of Complaints Examination and Legal Administration
Attn: Donna Rawls, Paralegal
1050 First Street, NE
Washington, DC 20436

RE: Fuse Washington, MUR #7418
SCBIL File No. 6518-003

Dear Commissioners:

On behalf of Fuse Washington, we are hereby responding to the allegations raised by Dennis Olson in the above-referenced matter.

Many of Mr. Olson's allegations are absolutely unfounded, as described herein. Several of the unfounded allegations seem to be based on a fundamental misunderstanding of the difference between free speech and electioneering communications; others are premised entirely on false information.

However, as described herein, Fuse Washington did err with respect to a few small independent expenditures of very little value. Due to the very low dollar amount at issue, and the overall insignificance of the alleged violation, Fuse Washington asks the Commission to exercise its prosecutorial discretion and dismiss this matter outright.

Dismissal would be appropriate, as the seriousness of the alleged conduct is not sufficient to justify the likely cost of an investigation, and the evidence is sufficient to support a "reason to believe" finding but the violation is minor and is not likely to be repeated. Fuse has undertaken steps to ensure this is the case, and will also remedy the situation by reporting any independent expenditures accordingly. Therefore, dismissal is the most appropriate course of action here.

First, we will explain Fuse's purpose and mission. Then, we will address each issue raised by Mr. Olson in turn.

Fuse Washington

Fuse is a Washington State nonprofit organization. Fuse mobilizes grassroots activists online and offline and builds councils of local leaders. Fuse delivers stories and messages that

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move people through new media and the news media, and trains others in the progressive community to communicate more effectively as well. Finally, Fuse holds decision-makers' feet to the fire when they let voters down.

The Allegations in Mr. Olson's Complaint

"1. PARTISAN INTENT"

While "Partisan Intent" is not a violation of any law, Mr. Olson uses posts on Facebook pages and groups to support his allegation that "FUSE has disclosed absolutely nothing in terms of fundraising and spending." See Complaint by Dennis Olson ("Complaint") at pg. 2.

To support this allegation, he starts with a post on the "Ellensburg Indivisible" Facebook group page—a group that shares common political perspectives but is *not* a Fuse-controlled or affiliated group—by a private citizen. Complaint at pg. 2. Sheril Bechard is not a Fuse employee or volunteer, and is not affiliated in any way with FUSE Washington. She cites to Fuse's reporting regarding issues in the 8th Legislative District in *one* sentence to support the rest of the statements made in her post. This does not create a violation of the law (or any sort of reporting requirement) by Fuse Washington or by anyone else. Posting comments in connection with a federal election, whether done by individuals or a group of individuals, incorporated or unincorporated, is exempt from regulation. 11 CFR 100.155(a), (b). Likewise, on the "Indivisible Wenatchee" Facebook group page (see Complaint at pg. 3), Vania Winters posted a call for volunteers to register voters, which, itself, also does not trigger reporting requirements.

Page 4 includes photographs—without comment—of citizens engaged in creative and costumed expressions of speech that Fuse Washington posted to its Facebook page. This also does not violate the law or create any sort of reporting requirement. 11 CFR 100.155(a), (b). Page 5 "provid[es] a hyperlink or other direct access to another person's website" on Fuse's Facebook page (here, a link to a newspaper's website), which is also unregulated under 11 CFR 100.155(b).

In short, the "examples" under "Political Intent" do not show any violation of any law, or any reportable expenditure. This portion of the Complaint must be dismissed outright.

"B. POTENTIAL POLLING"

This allegation relies entirely upon a statement made by a private citizen—unaffiliated in any way with Fuse Washington—that Fuse had "tested a number of phrases with voters." This statement is simply incorrect. Fuse has not engaged in any polling. It is true that the House Majority PAC and others have engaged in some polling surrounding the various candidates running in the 8th—a fact widely known in Washington State (and widely covered by the press),¹ including the actual leaked poll documents themselves.

¹ See, e.g., *The Stranger*, **"*UPDATED*: New Poll Shows a Democrat Beating Dino Rossi in Race to Replace Rep. Reichert"** (June 4, 2018 at 8:50 am), available at <https://www.thestranger.com/slog/2018/06/01/26573432/new-poll-shows-a-democrat-beating-dino-rossi-in-race-to-replace-reichert>.

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This portion of the Complaint must also be dismissed outright.

"C. FACEBOOK ADVERTISING"

Mr. Olson has cited an example of a Facebook ad that Fuse took out to direct attention to a news article written by a reporter at The Stranger, *see* Complaint at pg. 10, as an example of what he states is "clearly an expenditure that should have been reported."

First, Mr. Olson's selected example is an ad "providing a hyperlink or other direct access to another person's website" on Fuse's Facebook page (here, a link to a newspaper's website), which is unregulated under 11 CFR 100.155(b).

However, the example he cites *also* contains additional copy written by Fuse employees providing commentary about the substance of the article, which includes statements about candidates running for office in the 5th and 8th legislative districts.

Fuse employees did not fully understand that the additional copy used in some of those ads could arguably fall within the definition of "express advocacy," as outlined in 11 CFR 100.22(b), which states that express advocacy *also* includes circumstances where, although the electioneering communication does not always expressly identify a candidate, when taken as a whole and with limited reference to external events, could be interpreted as containing advocacy of the election or defeat of one or more candidate. Therefore, Fuse employees did not realize their commentary could cause the ad to be an independent expenditure, which would cause Fuse to meet the aggregate independent expenditure reporting amount for those who are not political committees as stated in 11 CFR 109.10(b) (amounts in excess of \$250 in a given election in a calendar year).

Crucially, the scope of the independent expenditures is quite small—\$900 in the 5th Legislative District and \$1,100 in the 8th Legislative District—and, to our knowledge at this time, has only recently surpassed the reporting amounts. Fuse is currently confirming this, and will file reports immediately with the FEC to reflect any independent expenditures.

Not only is the total scope of the violation minor, it is not likely to be repeated because Fuse has undertaken steps to ensure this is the case, including training on identifying reportable independent expenditures. Furthermore, Fuse will also remedy the situation by reporting any reportable independent expenditures, including ads that contain "express advocacy," with the FEC immediately.

Fuse believes that in this context, dismissal is the most appropriate course of action.

Conclusion

Mr. Olson's unsubstantiated rhetoric aside, Fuse wants nothing more than to engage in independent expenditures while complying with Federal election law. The error committed by Fuse is clearly *not* egregious, nefarious, or long-running, and we respectfully ask the

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Commission to so conclude. Due to the very low dollar amount at issue, and the overall insignificance of the alleged violation, Fuse Washington asks the Commission to exercise its prosecutorial discretion and dismiss this matter outright.

If you have any questions, or if there is anything we can do to be of additional assistance to you as you investigate this complaint, please do not hesitate to contact us.

Sincerely,



Laura Ewan
Dmitri Iglitzin
Counsel for Fuse Washington

cc: Aaron Ostrom

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